In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1059

ALFRED D. LAURENCE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 7) is reported at 341 F.2d 565.

JURISDICTION

The judgment of the court of appeals was entered February 25, 1965. The time to file a petition for a writ of certiorari was extended by Mr. Justice Black to April 12, 1965, and the petition was filed on

that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the instruction on the issue of mental competency was proper in view of the nature of the evidence on that issue which was tendered in this case.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of Florida on seventeen counts charging violations of the Securities Act of 1933, mail fraud, and conspiracy. He was given concurrent sentences of two years' imprisonment on each count; sentence was suspended and petitioner was placed on probation for five years on the condition that he pay the fine of $500 on each count (a total of $8500) at the rate of $2000 per year (R. 1221-1222). The court of appeals affirmed the conviction.

No issue is raised with respect to the sufficiency of the evidence. In general, the indictment charged (R. 1137-1179), and the evidence showed, that a group of persons (other than petitioner) gained control of the Columbus-Rexall company in February, 1956, and by increasing the authorized capitalization and by various mergers with other companies obtained large quantities of stock which were sold to the public with promotional material containing many misrepresentations. From July, 1956, to October, 1957, petition-

er's company, which employed salesmen using high pressure methods to sell stock, sold "over the counter" to the public approximately a million shares of Columbus-Rexall stock (R. 654-658). A research analyst, hired by petitioner in April, 1957, told petitioner that he did not believe from the available material that this was a suitable issue for sale (R. 608-613).

In addition to defending on the ground that he had acted in good faith, petitioner offered the defense of mental incompetency. The testimony, both for the petitioner and for the government in rebuttal, came, for the most part, from psychiatrists who had examined petitioner in or after March, 1962, during the course of a prior abortive trial for the same offenses. (R. 760-762, 812, 988, 1005-1006).[1] The psychiatrists also had the records of petitioner's claim for disability and treatment as an out patient by the Vet-

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[1] During the eighth week of trial, petitioner moved to release his counsel and represent himself. On March 21, 1962, petitioner moved for a mistrial on the ground that he had been incompetent when he moved for the court to proceed without counsel. After having petitioner examined by psychiatrists, the district court denied the motion for a mistrial on March 27, 1962 (R. V. 2-8). However, on April 2, 1962, after petitioner had not appeared on March 30, and it was learned that he had been admitted to the Veterans' hospital, the judge came to the conclusion that petitioner was suffering from mental exhaustion and was unable to participate in his defense. The trial was severed as to petitioner (R. 1190-1195). Petitioner was subsequently transferred to the United States Medical Center at Springfield (R. 761, 1009). In August, 1962, he was pronounced competent to assist in his defense (R. 1201-1202).

erans Administration after his discharge from the Air Force in the period between 1946 and 1950. (R. 759-760, 812, 819-822, 988-989, 1007, 1214). Since there was no record of any treatment of petitioner during the period between 1950 and 1962, all the psychiatrists who testified admitted that it was difficult to give an opinion with certainty as to petitioner's mental condition in the period at issue, 1956-1957 (R. 776, 778, 780, 830-831, 991, 1002, 1007).

The medical evidence favorable to petitioner's claim of insanity was as follows. The Veterans Administration file showed that petitioner had been classified as suffering from "psychoneurosis hysteria in a schizoid type of individual" (R. 765). A psychiatrist testifying for petitioner explained that a schizoid individual is a variant of normal personality and that a schizoid is not necessarily ill (R. 766, 829-830). Such an individual has a tendency to be withdrawn and live in a dream world (R. 766). This doctor had difficulty with the diagnosis of hysteria in a schizoid individual, being of the view that if there was enough of a split to be termed hysteria, this would represent latent schizophrenia (R. 767). He thought such a man would have had a severe personality disturbance from early childhood of which he would never be free (R. 770). When such a person was "high" he would be attractive to a number of persons because of his expansiveness and grandiosity (R. 772). The doctor also described a manic-depressive personality, a condition where a person has a false sense of well being and is often a highly-successful salesman (R. 772-774). The doctor thought it was possible that peti-

tioner was in a high period in 1956 and 1957 and was unable to tell right from wrong (R. 776-778), although at times he probably could (R. 778-779). Another psychiatrist who had seen petitioner in March 1963, before the present trial (R. 812), testified that in his view petitioner suffered from a manic depressive psychosis which he had had for many years (R. 817, 824). Persons suffering from this condition do not ever recover completely (R. 825). He testified, as had the other psychiatrist, that such persons often make very good salesmen (R. 817-819). A person suffering from that condition could not distinguish right from wrong (R. 824, 826-827).

The physicians called by the government testified that the Veteran's Administration diagnosis of 1950 was essentially that of neurotic and was consistent with the impression they formed in 1962 (R. 991-992, 1011-1012). Petitioner knew the difference between right and wrong (R. 992, 1007-1008). At the time of his examination in March, 1962, he was exhausted (R. 994) and in a psychotic depression (R. 1010, 1012). One of the government doctors testified on cross-examination that petitioner would be easily misled by others and would take refuge in fantasies (R. 995-996). He felt, however, that petitioner was of the schizoid type "which is almost the opposite of the manic depressive type" (R. 998).

In addition to the psychiatric testimony, petitioner offered the testimony of a banker who was also in the securities field and who had seen petitioner on one occasion during 1956 or 1957 and had spoken

with him on four or five occasions. At the time of the meeting, petitioner was already in difficulties with the S.E.C. The banker stated that petitioner appeared to be under great strain and made irrational statements about the company (R. 749-757).

The judge charged the jury (R. 1110, Pet. App. B):

> You are instructed that there has been introduced into evidence on behalf of the defendant Laurence evidence which tends to prove that at the time of the commission of the alleged offense here involved, the defendant was suffering from a mental defect or disease. You are further instructed that if the whole evidence presented to you does not exclude beyond a reasonable doubt the hypothesis of mental illness, as I shall explain in my next instruction, you should find the defendant not guilty.
>
> If you find that due to mental illness at the time of the alleged crime, the defendant Laurence did not know the difference between right and wrong or was unable to refrain from doing wrong, you must acquit him. Only if you find from all of the evidence beyond a reasonable doubt that he was sane or if mentally ill, that he knew the difference between right and wrong and was able to refrain from doing wrong, may you convict him.[2]

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[2] Petitioner's tendered instructions (R. 1225-1227) are set forth in Appendix C of the petition for a writ of certiorari.

ARGUMENT

Petitioner asks the Court to review this case as a vehicle for laying down a general rule which will apply in all cases where the defense of mental competency is raised in the federal courts. We suggest, however, that this is a particularly inappropriate case for that purpose because of the nature of the defense which was tendered in this case. The defense of insanity as raised in this case is not the norm. There was no question here but that petitioner was intelligent and knew that he was selling stock; that he was able to conduct a business, consult with his attorney, hire salesmen, discuss a merger, etc. None of the psychiatric testimony adduced by petitioner (either on direct examination of the psychiatrists who testified for him or on cross-examination of those who testified for the government) was directed to establishing that petitioner was without substantial capacity to conform his conduct to the requirements of the right even though he might know the difference between right and wrong. The whole thrust of petitioner's insanity defense was that, because of his assumed manic-depressive condition, with its tendency to flights of fancy and delusions of grandeur, petitioner did not know the difference between right and wrong when he engaged in his stock-selling activities. This was a potentially meaningful defense in relation to the charge here, where petitioner was charged with being (as what his psychiatrists testified such personalities frequently are) a super-salesman who sold stock with exaggerated claims of its present value and potentialities for

the future. It also had the virtue of being entirely consistent with petitioner's other defense that he acted in good faith. But, having drawn the issue essentially in terms of petitioner's ability to know the difference between right and wrong, petitioner is in no position to complain because the judge in his charge couched his instructions in those terms.

The judge's charge, although short, was adequate to put the issue as framed in focus for the jury. The jury was told that they had to decide beyond a reasonable doubt either that petitioner was sane, (*i.e.*, not mentally ill) or that, if mentally ill, "he knew the difference between right and wrong and was able to refrain from doing wrong". This latter part "able to refrain from doing wrong" is merely another way of phrasing the idea which petitioner sought to incorporate in his proposed instructions, phrased by him either as "incapable of preventing himself from committing the act" (Tendered Instruction No. 1, Pet. App. C), or lack of capacity to conform his conduct to the requirement of the law (Tendered Instructions No. 2 and 3, Pet. App. C). Considering the lack of any evidence tending to show any incapacity to conform, or refrain from doing wrong, the instruction given may well have gone beyond what was required by the particular facts of this case.

The present state of federal decisions with respect to the defense of mental incompetency was discussed in some detail in the government's brief in opposition to the petition for a writ of certiorari in *Korman* v. *United States*, No. 993 Misc., O.T. 1963. As we there pointed out, a basic consensus has developed in the

federal decisions. While the phraseology may differ somewhat in the instructions approved in the various circuits, the same general underlying principles are emerging in all the circuits which have been called upon to deal with the issue. There is a general recognition that a formulation of the insanity rule should be a means of allowing the jury to hear full psychiatric testimony concerning the mental condition of the accused. That was done here. And there is general recognition that, if this is done, then the exact formulation by which the issue is presented to the jury may vary so long as it includes the basic elements of cognition, volition, and capacity to control behavior. See *Feguer* v. *United States*, 302 F. 2d 214, (C.A. 8), certiorari denied, 371 U.S. 872. Here there was no issue as to cognition; petitioner unquestionably knew what he was doing. The elements of volition and capacity to control were submitted to the jury with a proper emphasis on the element of knowledge of right and wrong, which was the way in which the issue had developed in the evidence. Hence the instruction given was appropriate to the particular facts of this case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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